

[22nd December 1949]

THE DEPUTY PRESIDENT :—“ The motion is—

‘ that the Madras Tuberculosis Sanatoria (Regulation of Buildings) Amendment Bill, 1949 (L.A. Bill No. 43 of 1949), as passed by the Legislative Assembly, be taken into consideration at once ’.”

The motion was carried.

Clauses 2, 3, 4, 1 and the Preamble were put and carried.

THE HON. DR. T. S. S. RAJAN :—“ Sir, I move—

‘ that the Bill be passed into law.’ ”

THE DEPUTY PRESIDENT :—“ The motion is—

‘ that the Madras Tuberculosis Sanatoria (Regulation of Buildings) Amendment Bill, 1949 (L.A. Bill No. 43 of 1949), as passed by the Legislative Assembly, be passed into law.’ ”

The motion was carried and the Bill was passed into law.

(6) THE MADRAS EDUCATIONAL INSTITUTIONS (REQUISITION OF PROPERTY) BILL, 1948 (L.A. BILL NO. 25 OF 1948).

* THE HON. SRI K. MADHAVA MENON :—“ Sir, I move—

“ that the Madras Educational Institutions (Requisition of Property) Bill, 1948 (L.A. Bill No. 25 of 1948), as passed by the Legislative Assembly, be taken into consideration at once.”

“ Sir, this is a Bill which had created some comment when it was introduced in the other House originally. The object of the Bill is that if any educational institution stops of its own accord in the middle of an academic year or the recognition of that school is cancelled by the department during the period of an academic year, the Government should have the power to requisition the buildings, furniture, apparatus and other equipment necessary to take over the school. They may even take over control to continue the school for the rest of the year.

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“ When the Bill was originally introduced, it simply said the Government could requisition any immovable property and pay rent for it; the period was indefinite. It was referred to the Select Committee, where there was considerable agitation. When it was discussed in the Lower House, it also showed that there was considerable fear among one section of the aided schools, particularly the Catholic section, that the Bill was intended to take possession of all aided institutions, it was a sort of trespassing on private rights and that it was discriminatory in its nature. In view of that, the Select Committee went in detail into this question and amended the Bill considerably so as to accommodate all the objections that were raised and the Select Committee came to the greatest common measure of agreement that was possible in a case like this. The result of the amendment made by the Select Committee is this. Originally it was an indefinite period for which the Government could take over possession. Now, it has been made clear that the object of the Bill is only to take control of the building and property for a temporary period, and in order to set at rest any doubts in the

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matter, we changed the title of the Bill itself and called it 'The Madras Educational Institutions (Temporary Control of Property) Act'. We also made it perfectly clear that if an institution is closed in the middle of an academic year, control will be taken only for the remaining portion of the academic year or, if necessary, for a further period not exceeding one academic year, the object being that the Government may find some sort of way to accommodate the students in that school without being thrown out into the streets. We have instances of managements conducting a school, not paying the teachers, and then suddenly closing the school in the middle of the year. It is not an easy thing to find accommodation for 600 or 700 children in any school, at that time. The Government cannot be helpless in a matter where the students have to be provided for for the remaining part of the year. The only power we had was to cancel the recognition, a remedy much worse than the disease. We had no other power and the situation has become worse now because the number of schools has increased during the last three years enormously and the position is not like some 5 or 10 years before when there were only 200 or 300 children in each school. Now the high schools have got 600 to 1,000 children each. It will not be easy to find accommodation for 600 to 1,000 children in the middle of a year. So, it has become necessary to make some provision for a contingency of a management closing a school of their own accord or the recognition being cancelled in the course of a year. It is not likely that the Department will cancel recognition in the middle of a year. So, a sort of defiance of departmental orders and regulations has set in and doing everything irregular has become common because they know that in the middle of the year recognition is not likely to be cancelled. So, it has become necessary to arm the Government with powers to see that these children are not thrown into the streets, if I may say so, in such a contingency. That is the power we are taking under clause 3 (1).

"Sir, this has been criticized that it is discriminatory legislation and that it is intended against a particular community. I, for my part, find no sentence or clause in this Bill which can be said to be discriminatory. Particularly the objection to this Bill has come from the Catholic community. True, the Catholic community has a large number of aided institutions in this Province, but the majority of the institutions are not Catholic ones. There are about 700 aided institutions of which only 1/7th are Catholic ones. I think there are more non-Catholic than Catholic institutions whose recognition has been cancelled. To say that this is discriminatory means that we have an idea that the Catholic schools or any other sectarian schools should be closed. It is more easy for the Government to cancel recognition than to find a way to accommodate the students. I only want to assure the House that no such discrimination has been meant and the only idea is that if a contingency happens like that, we must have sufficient power to see that the students thrown out in the middle of the year are given an opportunity to complete that year by the Government finding another building or finding accommodation for them in other

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schools. It was said that Catholic institutions were not merely educational institutions but there were religious blocs attached to those institutions. We have made it clear that if an occasion arises for the Government to take temporary control of an institution and if the Government are not in a position to conduct that school themselves, it cannot be entrusted to any other private body which does not belong to the same denomination as the one which was conducting the original school. So even that fear has been allayed by the amendment that was accepted by the Select Committee. Originally the proviso to sub-clause (5) of clause 3 was ' Provided that such person or body shall, as far as possible, be of the same religious denomination. . . ' When the Select Committee report was discussed in the other House, it was said that it should be given only to a body of the same denomination to which the original body belonged. An amendment was moved that the words ' as far as possible ' be removed, and I agreed even to that. So, there may not be any doubt. We have also provided an alternative provision that if the Government do not act within the academic year of the closing of the school or the withdrawal of recognition, Government cannot act further. So, such safeguards have been provided even to allay imaginary fears that may arise."

THE DEPUTY PRESIDENT:—" The motion is—

' that the Madras Educational Institutions (Requisition of Property) Bill, 1949 (L.A. Bill No. 25 of 1948), as passed by the Legislative Assembly, be taken into consideration at once.' "

* SRI R. SURYANARAYANA RAO:—" Mr. Deputy President, Sir, I am sure every Member in this House is in full sympathy with the Government in their object in bringing this legislation. I wish the Hon. Minister had given us some information regarding the necessity which arose for this Bill. Have there been any managements who have proved recalcitrant? Secondly, there are sufficient provisions in the Grant-in-aid Code under which institutions in receipt of grant either for purposes of building or for equipment are under the control of the Department of Education. I wish he had also dealt with this point as to how those provisions are inadequate to meet the needs of the situation. As far as I can read the provisions of the Grant-in-aid Code, under article 56 in respect of managements which are in receipt of grants for building and under article 60 in respect of managements which are in receipt of grants for equipment, the department possesses ample powers to take possession, if they feel the need to do so.

" Sir, it may be that the legal pandits of the Government have suggested that those articles are not enough for Government or for the department to enforce their orders. If that is so, this Grant-in-aid Code has been in existence for a number of years; why did not the former Government feel the need of the kind that has arisen now? I think the Minister for Education must convince this House of the necessity for this piece of legislation.

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"Sir, none of us, I think, have given notice of amendments. With your permission, Sir, I would like to draw the attention of the Hon. Minister to some points arising from the various clauses of the Bill. In clause 3, sub-clause (3) proviso, it is said 'Provided that failure to comply with the provisions of this sub-section shall not affect the validity of the order.' I do not know how the Hon. Minister for Education, being himself a lawyer, could accept such a proviso. I am surprised such a provision has been introduced. The procedure as to how the order is to be served could have been prescribed by the Government under their rule-making power. A person who is to be deprived of his property, whether he is a good manager or a bad manager, must be aware as to why the Government propose to take over the property and what is going to happen to it.

"The proviso to sub-clause (6) of clause 3 says :

'Provided that the Provincial Government may, if in their opinion it is necessary so to do, by an order in writing published in the prescribed manner, direct that their control over such property shall continue for a further period not exceeding one academic year.'

It means in the aggregate not more than 2 years, the year in which possession was taken and another year, if an extension is given. Is not the purpose of this Bill defeated by possessing the property only for two years in the aggregate? I would have liked the addition of the following words :—

'or till such time as necessary arrangements are made for the proper conduct of the institution.'

"Sir, it may not be possible within one or two years to make the necessary arrangements. The object of the Government is that the institutions should not be closed and the children should not be put to inconvenience.

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"Sir, in respect of immovable properties, a procedure is laid down. As regards movable properties also, I do not know why the same procedure that has been laid down in the case of immovable properties, like, science apparatus and other equipment, furniture, etc., which all cost a great deal has not been adopted. Any provision made in respect of immovable property should also be made applicable in respect of movable property. Then there is clause 8 (2). Under this the Government relinquish their control over any property and deliver the same to some person. But suppose there is another person who is entitled to that property. He is asked to go to a court of law and establish his claim. The Government themselves recognize that this 'shall not prejudice any rights in respect of such property which any other person may be entitled, by due process of law, to enforce against the person to whom possession of the property is so delivered'. Is it fair to promote litigation in respect of this? Could not the Government deliver the property to the same management or person from whom they have taken control? It is not necessary for the Government to say that the fact that they have handed over this property to those from whom they have received would not debar other persons who have rights in that property from proceeding to Court. It is

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ordinary law that any person who has a claim, whether the Government took over the property or not, can proceed to a Court if the owner of the property is in any way indebted to him or there has been a case of alienation. Then there is a lacuna, as lawyers might say in clause 8 (4), where a mention is made of notification in the *Fort St. George Gazette*. But in clause 8 (3) it is said, 'in the case of any building or land, shall cause a copy thereof to be affixed on some conspicuous part of such building or land'. Should not some such provision also be included in clause 8 (4). In the previous clause it is stated that a notice will be published in the *Gazette* and a copy thereof shall be affixed in some conspicuous place. It is 'and' not 'or'. Of course it is only legal. In sub-section (3) of clause 8, you suggest two methods by which a notification is to be made, i.e., not only publication in the *Fort St. George Gazette*, but also that a copy thereof of the notification should be affixed on some conspicuous part of such building or land. In sub-section (4) of the same clause, you do not mention anything of this second part. There is no reference to this at all in this sub-section.

"Then, under the rule-making power, I do not understand how the Government are competent under rule 13 (2) (d) to say that they can make rules with regard to the payment of the costs incurred by the parties in connexion with such appeals. It is for the Courts to decide who should pay the costs and what should be the costs. How can the Government by rules under the statute prescribe who should pay the cost and what should be the cost. I do not think it is right to interfere with the discretion of the Courts.

"These are the points that suggested themselves to me. I am not a lawyer. I am only a layman. But as I was going through the Bill, certain points occurred to me which I have referred here. I once again request the Hon. Minister for Education to tell us how and why they felt the need for this piece of legislation. It was introduced in July last and it is being enacted now. Have any cases occurred even since July up to now which the Government found it difficult to deal with? If not, why take this power unnecessarily and place it in the hands of the departmental officers. I do not know what the fears of the various communities are with regard to this measure, and whether they are legitimate or not. But I feel that unless a case is made out for this piece of legislation, I do not think the Government will be well-advised to proceed with it. Sir, my hon. Friend, the Minister for Education is only an adopted father of this Bill. When he adopted it and made it his own, I hope, Sir, he examined the various provisions and then pleaded for this piece of legislation. Simply because, his predecessor introduced it, it is not necessary for him to proceed with it. Unless he is satisfied even during the period that the Bill has been before the public that there were cases in which such drastic remedies as the ones provided in this Bill were found to be necessary, he need not proceed with this Bill at all."

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JANAB K. T. M. AHAMED IBRAHIM :—" Mr. President, Sir, ever since this Bill was notified, there has been a storm of protest throughout the land against this measure, especially among the educated circles. It must be conceded that private agencies have been playing a very large part in the spread of education in this Province. Among the private agencies one particular agency has been from the very beginning protesting against this measure. They felt that this measure is calculated in effect to affect their work very seriously and a very grave suspicion has been created in those quarters. It cannot be said that this suspicion has no ground. Thus there has been a strong suspicion and they have appealed to the Government to drop this measure. They have also waited in deputation on the previous Education Minister from whom our present Education Minister has inherited this Bill. I would appeal to the Government to consider whether there is any necessity at all to enact this measure. There is no use of enacting measures for hypothetical cases that may possibly arise later. In this case, I would appeal to the Hon. Minister to consider whether there is absolute necessity, and whether this measure is necessary to deal with specific cases which may arise immediately or in the near future. As has been pointed out by the previous speaker, Sir, all these years in the past, no Government found it necessary to enact such a measure. Then, why should you suddenly impose this measure on the people now who are engaged in the cause of education. I do not think that the Hon. Minister has made out a strong case for the enactment of this measure at this moment. True, he has brought forward certain amendments in the Lower House, particularly with regard to clause 3, sub-clause (6). Still, I would appeal to him, even though the Bill has been passed in the Lower House, to consider whether if this measure is not passed there is going to be any serious difficulty to be faced by the Education Department in the matter.

" Sri Suryanarayana Rao was referring to the difficulty under sub-clause (3). I would like to mention here the difficulty or obstacle under some of the other clauses. In sub-clause (2) of clause 3, it is stated, " the taking over of such control shall be effected by an order in writing addressed to the person who is deemed by the Government to be in possession of the property; and the order shall be served on such person in the prescribed manner ". Sir, when these schools are being controlled by the Education Department, cannot they find out who is exactly in possession of the property? Here again you want to be speculative. You say, it will be addressed to the person who is deemed by the Government to be in possession and not to the person who is under the ordinary law expected to be in possession. As a matter of fact, somebody else may be in possession according to the records. I do not know why there should be such doubts and suspicions even with regard to the framing of an Act. I do not want to say anything further on this because this has been agitating the minds of the people especially those who have been engaged in the spread of education for decades. They have expressed their

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opinion clearly. I would like the Hon. Minister to explain whether there is any imperative necessity to pass such a measure as the present one."

DR. A. LAKSHMANASWAMI MUDALIYAR :—" Mr. President, Sir, at one stage, I had an opportunity to be in the Select Committee which considered some suggestions with regard to the proposed Bill, when the former Minister was in charge of this Bill. 'I accept the position that there has been some changes introduced and changes for the good in the final conception of the Bill and the Bill as it has been passed. Even so, Sir it requires further amount of consideration whether a Bill of this nature is not likely to prejudicially affect the possibility of private institutions springing up for the sake of education in this country. It is unfortunate that the Government's finances are such that they have not been able to come forward with those measures which other Governments in democratic countries have come forward for the spread of education. Here I have a copy of the Education Act of 1944 passed in England which gives a graphic idea of the responsibility of the Government in regard to the provision for education, both at the primary stage, at the secondary stage and at the stage of further education. The Government have taken full responsibility in that country for seeing to it that every boy and girl is given facilities for education, not only in the primary stage, not only in the secondary stage, but also in the stage which is now known as further education up to the age of 19. Well, I have been looking in vain all these years ever since the popular Government came into power in 1946 to see what opportunities are given by the Government in the cause of further education and what their efforts have been in this direction. Almost every effort that has come in this direction is from private agencies. It is due to missionary institutions and it is due to the philanthropic citizens and it is due to a large number of associations of a voluntary nature that education has spread in all its grades—primary education, secondary education and collegiate education of which I can speak with some confidence, as well as technical education. This Bill has come forward on the plea that because the schools may sometimes be closed, it is necessary for the Government to take over control of these schools. May I ask, when the Government closed certain of their schools, as they were supposed to be on the basis, as I then understood it to be, that they were not working propositions, how can they take powers to take over the private schools? A number of schools were closed by the Government, because they were supposed to be not financially sound propositions. Because of the small number of children that will be thrown out, I ask again what is the authority that is responsible for taking over the schools. Is it right that there should be one law for the Government of the day and another for the citizen of the country?

" I feel also, while I give due credit to the Hon. the Minister for the various changes which he has effected in the Bill, there

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are certain points which require further consideration. This Bill includes colleges. May I know, Sir, whether the Universities concerned had been consulted before the colleges were included in this Bill. How many colleges have the Government got, as compared with the very large number of very efficient colleges maintained by private managements. I can say, Sir, that the position of collegiate education in this Province would have been deplorable, the position of education in the University of Madras, at any rate, would have been most deplorable and many more questions would have been asked about the failure to get admission into the colleges, if a very large number of big private managements had not come forward and opened colleges of a conspicuously successful nature. Sir, this Bill is a reflection on private managements. It is an undeserved reflection on them. I do not bother whether they are religious managements or non-religious or Catholic managements. But I must pay my humble tribute to the Catholic institutions in this Presidency which have done yeoman service in every field of education. Fifty per cent of the students reading in collegiate institutions under the University of Madras are catered to by Catholic institutions in this Presidency. Let us not forget that fact. Who will at any time suggest that inefficient managements and managements which misbehave should not be brought in line and corrected? I seek to suggest that a reflection of this kind is hardly desirable upon the many institutions that have sprung up because of Government's lack of interest in the education of the people of this country and which have done yeoman service.

Let me now go to some other points. The Education Act of 1944 is a very valuable document, because it prescribes a method by which situations are met if certain educational institutions do not come up to the primary standard. In such cases, what does the Education Act say? The responsibility in the whole of the Education Act, 1944 is on the Minister. I wish to particularly draw the attention of the Hon. the Minister in charge of Education to the fact that in every Section of the Act, wherever a measure has to be taken, wherever a school is to be considered a defaulting school, it is not the Collector of the District, it is not some authority who may be prescribed by the Government, but it is the Minister who should see, it is the personal responsibility of the Minister to see, that that particular Section of the Act is administered. Section 71, for instance, says :

‘(1) If at any time the Minister is satisfied that any registered or provisionally registered school is objectionable upon all or any of the following grounds the Minister shall serve upon the proprietor of the school a notice of complaint .

I can repeat section after section but I am convinced in saying this, that this Bill seeks to confer power on various persons whose responsibility is certainly not to the Legislature in the direct sense in which the responsibility of the Minister would be to the Legislature. If in a country like England which is of the size of this

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Province, at any rate, the Minister can be personally held responsible for the administration of every section of this Act of 1944, is it just, is it fair, that the Government here should pass a measure whereby a large number of subsidiary agencies get control of the educational institutions that cannot work, for valid or for invalid reasons?

“There is another point which I would like to suggest. We are all for education. We cry at the top of our voice that education should spread but what do we do? Whether we are Government, or whether we are Local Boards or any other machinery, every educational institution is being taxed. The local authority wants to claim taxes. I have ventured with great diffidence, mustering all the courage that I can as Vice-Chancellor, to send an appeal to the Corporation of Madras to exempt from the taxes the building that has come up which at that time was not within the jurisdiction of the Corporation of Madras but which now the Corporation of Madras has sought to get within its limits, a building for which no provision has been made for municipal amenities, no drinking water is provided, no roads are put up within its campus and no drainage is maintained, and yet a large bill for the payment of the annual assessment in the shape of municipal taxes is sought to be levied. I still hope, Sir, that with the co-operation of the Members here and in the other House, the University will be exempt from these taxes. But may I in this connexion read what Section 64 of the Act of 1944 says:

‘No person shall be liable to pay, in respect of the school premises of any voluntary school, any rate the proceeds of which are applicable to public local purposes, whether directly or by reason of any precept or otherwise, being a rate leviable on the basis of an assessment in respect of the yearly value of property.’

But we on the other hand, seek to increase those rates on colleges, on every conceivable school and when the party is not in a position to pay for it probably he will be a defaulter under the particular section of this Act. May I also in this connexion refer to the fact, a common thing in all legislations that have been brought forward within these many years that generally when the Government make rules for carrying out the purposes of the several Acts, these rules are not subject to any sort of criticism by the Legislature. On the other hand, in the Education Act of 1944 it is laid down under Section 112 and it is a regulation that—

‘All regulations made under this Act shall be laid before Parliament as soon as may be after they are made, and if either House of Parliament, within the period of forty days beginning with the day on which any such regulations are laid before it, resolves that the regulations be annulled, the regulations shall cease to have effect, but without prejudice to anything previously done thereunder or to the making of any new regulations.’

In reckoning any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.’

Sir, I wish to repeat emphatically that this procedure that has been made in the Mother of Parliaments is a procedure which should not be deviated from and yet under every important Act that is passed, every expropriatory Act, if I may use the word without offence, whether it is Zamindari Abolition, whether it is

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Control, or whether it is a sort of Compulsory Taxes or an Act for requisitioning property or taking powers for utilizing for temporary periods educational institutions, rules are being sought to be made, and the rules would never come to light before this House as such, and there will be no opportunity given to the House to express any opinion about the rules whatsoever. If the Houses of Parliament which have got important business to transact, of an all-world nature, if I may say so, can find time to discuss these rules, to examine them, and if it is incumbent upon the Government of the day to place the rules before the Houses of Parliament and to give them as many as 40 days, then what prevents our Legislatures to adopt a similar procedure even for a restricted period? It is always the case with the Government to offer no time for discussion in the Legislature. Let us understand the principle. Are we working a democracy or are we not? If we are not working, let us accept it as such and let us go forward without any rule-making power for the working of any Act that this Government may propose, expropriatory or otherwise, and let us all say 'Hallelujah' to the glory of the Bill that may be passed."

* SRI M. NARAYANA MENON :—“ Mr. Deputy President, Sir, I am glad that the Government has introduced such a Bill as this. Though some provisions may not be fully acceptable to some of the hon. Members, the general nature of the Bill will most certainly be acceptable to all. We cannot think of the progress of education in the British Isles during the last 200 years and then say we have not done similar things here. Our aim must be that every boy and every girl is properly educated. It was in the course of last two years probably—after August 15, 1947 the responsibility to educate our children has really come upon us and every Province and also the Centre have made it their policy to do so. But things cannot be done all of a sudden. For the last 150 years, up to 1947, the Government of the country did not work, did not do anything that was necessary for the accomplishment of this object, although in the British Isles they have been adopting a different policy. Now this Government must realize that the West has moved and so they must and I am glad they are moving. Sir, there are institutions which are run by Catholic, or non-Christian or Hindu or Muslim organization. There are also other institutions, some of them being conducted with the aid of the Government. Suppose any such organization on account of political reasons or on account of wrong notions does not want to continue that institution; then the Government must take it up. But can the Government at present take it up without due preparation all at once? Certainly they cannot. But the Government must do it, by providing for the taking over of movable as well as immovable properties concerned so that the institution may be carried on for the time being for one year or for two years at the most, by which time the Government must be prepared to have the properties returned or to pay to the owners of the properties the value of the things that they have taken over. This is what the Government have done in this Bill, and we cannot blame them for it. After all our ideas of property rights are undergoing a change. If you look at the whole matter,

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you will find that all over the world the idea or the concept of property is undergoing a rapid change. The properties are meant for use and not for being hoarded. Property is not to be kept by one for his own purpose only. Some change in this direction is going on not only in this country but in several parts of the world and we have to accept it. Now what the Government proposes to do is to take up such properties under certain conditions and use them for the public good for a specified period and then return the same to the rightful owners. If they cannot return within the specified period, in certain cases, they will pay compensation on certain lines. Therefore, there is not much to be condemned in this Bill in so far as taking over of the properties by the Government.

"Then there is another point which relates to communal denomination, in the matter of entrusting the management of the school taken over by the Government. The Minister concerned pointed out that he had introduced a certain change in one of the clauses, i.e., clause 3 (5) where there is the following proviso :

'Provided that such person or body shall be of the same religious denomination, if any, as that of the person or body from whom or from which, control of the property was taken over.'

The fact about this proviso is that the words 'as far as possible' which found a place in the Bill when it was placed before the House for consideration were taken away to satisfy certain critics. The Government had accepted an amendment to omit these words. My submission is that these words ought not to have been omitted. Suppose a Muslim conducts a school not for the Muslim boys and girls alone but for all people. Now the conduct of the school cannot be continued by a Hindu, because the object of the present proviso is to hand over such an institution to a member of the same religious denomination. Suppose this person is unable to get on with the maintenance of the school in which boys and girls from all communities study. Is it not the duty of the Government to take it over and give it to some one who will run it efficiently? And what is the harm in handing it over to a Non-Muslim, either a Hindu or a Christian, in so far as the institution caters to all? So, Sir, I strongly feel that the words 'as far as possible' ought not to have been omitted.

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"If a school is taken from Muslim denomination, it may be handed over to a Hindu or a Christian under certain circumstances. Another matter is, suppose it is a Muslim religious institution and he did not continue it, it may be handed over to a Muslim gentleman. There is no harm because he would continue the school as it was continued to impart religious instructions. If supposing there has been no religious education at all in such institutions, where is the harm in handing them over the Christian institution to a Hindu or a Muslim? If the institution is not conducted by the Christian body for religious purposes why should it not be handed over to any other man irrespective of community?

"Then, Sir, I want to refer to two or three points relating to legal matters started in the course of the discussion. For instance in section 3, sub-section (3) it is stated that a copy of every order

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under sub-section (2) shall also be served in the prescribed manner on the owner of the property concerned, if he is not in possession thereof. I would request you to consider the clause 'if he is not in possession thereof', when you read the proviso. The proviso says that failure to comply with the provisions of this sub-section shall not affect the validity of the order. This Bill empowers the Government to take possession of the property from persons in possession and the Bill however provides for notice should be given to the owner of the property also. But an order to take possession from a person who is deemed to be in actual possession of the property, will not be invalidated if no notice is served on the owner also, because the property is not taken from the owner but it is taken from the person in possession. There is nothing wrong in that proviso whereunder the failure to comply with notice to the owner shall not affect the validity of the order because the order is only an order for possession. There is nothing injurious to the owner of the property in that proviso.

"In sub-section (2) of section 3 it is stated that the taking over of such control shall be effected by an order in writing addressed to the person who is deemed by the Government to be in possession of the property. The objection relates to the words 'deemed to be in possession of the property.' Indeed, it is a necessary clause because the Government ought to fight saboteurs. Suppose A is in possession of the property at the time the order is passed and B takes possession of the property before the order is served. At the time the orders are to be executed B is in possession of the property. Thus very easily the person in possession of the property can sabotage such an order. Therefore it is that the section says 'deemed to be in possession of the property.' Otherwise Government can very easily be duped.

"Then I have one objection to one part of clause 4, which says that the Collector shall decide to whom the rent is payable when there is a dispute. An appeal against this can be made to the District Judge. The District Judge is of course the person administering civil law and I can understand the appeal being placed before the District Judge. But the Collector does not administer civil law. He exercises only authority. Any decision by him will not help the party to get proper justice even from the District Court because the Collector will not be taking legal evidence. Legal evidence must be taken only by the Judge who is qualified for that purpose. At the outset the decision shall not come from the Collector. The decision must come from a Civil Court to start with and then only the decision will be proper and the points will be considered with the help of the lawyers. But here all authority is given to the Collector who passes orders first and then the right is given to the party to take the matter in appeal to the District Judge. It is better that the title to immovable property is settled by the Civil Court. My submission is that there must be an amendment with reference to this matter.

"Section 11 states that no decision or order made in exercise of any power conferred by or under this Act shall be called in question in any Court of law. That section I think will affect even

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the order of the District Judge. There is no appeal from the decision of the District Judge in the matter. That an appeal should be allowed and this section should be worded not to affect such a decision of the District Judge. If you want to amend it here it will be difficult. It will have to go back to the Assembly and so many other things. But this Bill has to be passed earlier in so far as taking of these school properties is concerned. The Bill may, therefore, be passed now but I request the Government to consider this matter at an early date and the necessary amendments may be introduced."

* SRI B. BHIMA RAO :—" I should like to say a few words, Sir, on the necessity of this Bill. My friend, Dr. Lakshmanaswami Mudaliyar knows the case of the College in my place. It went on for four or five years without complying with the reasonable conditions imposed by the University authorities and hence they cancelled the affiliation. Government were also good enough in this particular case to give a building grant of one-half of the amount required as a very exceptional case. The estimate for the construction of the college buildings was 4½ lakhs and the Government as an exceptional case in these days of financial stringency were pleased to grant 2 lakhs for constructing the buildings and for equipment. But the authorities of the College said we cannot go on. Hence the University authorities cancelled the affiliation. In such case as this, I submit, Sir, a measure of this nature is absolutely necessary. I would rather say that instead of saying that the Government may step in and take possession of the building I think it is the duty of the Government to step in as a matter of necessity and take adequate measures so that the collegiate education might continue in places like that instead of stopping abruptly as at present. Of course, I pleaded very hard with the Government of Madras. But on account of the financial considerations they won't accede to my request. Not only myself, but the Municipal Council, Bellary, and several others urged upon the Ministers who have been touring the district the necessity for the establishment of a College and the continuation of such a College. But the Government could not grant this."

DR. A. LAKSHMANASWAMI MUDALIYAR :—" On a point of explanation, Sir. The College did not close before the last working day and the Government had at least three years' notice as to the position of the College and the attitude of the persons in charge of the College."

* SRI B. BHIMA RAO :—" I think the measure covered the case of the particular College I am speaking of at Bellary. I only wish that the Government had enacted this measure before and taken possession of the buildings as well as equipment and continued the College. Then, Sir, with regard to the introduction of the proviso in clause 3, I am of the same opinion as my friend Mr. Narayana Menon. This proviso, I feel, is a concession to those authorities who contended that this measure has been enacted with

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a view to, may I say, suppress the aspirations of the religious denominations to establish their own institutions. I think, Sir, it is rather unhappy that this proviso should have been introduced because there is the implication there that the real object with which this legislation has been introduced is on communal considerations which I believe did not exist in the minds of the Ministers or the Cabinet. I may also say, Sir, in the case of the Bellary College, which was run by a particular religious denomination, if this Act had been enacted before and if the Government had taken over control of that College, why should it be handed over to the very same gentlemen who were incapable of running the College? Since the whole thing has come from the Assembly, I do not think this clause should be deleted and the Bill sent back to the Assembly. I say, Sir, such a measure is absolutely necessary and Government should have power to take possession of Colleges in such contingencies."

MRS. MONA HENSMAN :—" Mr. Deputy President, Sir, 1-15
after what has been said by hon. Members about this Bill, there P.m.
are only a few remarks for me to make and I trust the House will have the patience to bear with me when I ask the Hon. Minister for certain clearing up of a few doubts in my mind. For instance, the money and the properties that are taken over by the Government, will they be guaranteed to the authorities and the management on their return? Will the Government have power to take charge of such endowments and moneys as are necessary for the continuation of affiliation of certain institutions? If there is such a guarantee, it will not mean that there will be a displacement or divergence of after-life of that institution. Then there is sub-clause 5 (ii) of clause 3—I do not want to go into details as this is the opening discussion—wherein the Government has got every right to ask somebody to buy or pay money for taking over such an institution as has been deemed by the Government to be badly, illegally or inefficiently run. Can the Government settle the amount that such a body is to pay for taking over the institution and meanwhile will that body as the step-mother or the step-father have the power to deal with any of the immovable properties because in clause 3 (1) there is no guarantee that the Government has got to return all the immovable properties? If I say Government it is because it takes it up in the first instance and it may pass it on to somebody else, but ultimately the Government is responsible since it has taken it over from the management. There seems to be no guarantee that such property will be returned intact, or in any way not interfered with and there is also no guarantee that in the case of teachers or other members of the institution, they will be paid according to the rates that are laid down for affiliated institutions. For the schools the Director of Public Instruction and for Colleges, the University will presumably be the ultimate authority. I feel there must be an assurance that such properties will not be interfered with, that endowments will not be annexed or otherwise used, that teachers and other members of the staff, menials and others

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will be given salaries at prescribed rates. The trouble is this, Sir. Managements will be deemed to be inefficient because something has happened, either the staff is poor, or the administration is poor or the organization is not efficient and coming to an end and the Government will have very good reason for taking over and suspending their life. Therefore, I am asking for these guarantees because presumably the management is not in a position to guarantee such things. And then, Sir, what other properties are included within the scope of the Bill, will it include hospitals, business concerns and new sanatoria hitherto used by the Military more or less as private institutions; would these also be dealt with in the same manner as these private educational institutions? Then finally, Sir, I am thinking of clause 7. I have been assured by the hon. Leader of the Opposition that man embraces woman in this House. Yet when women and children are to be displaced pursuant to this section, not necessarily in educational institutions, would alternative accommodation and suitable accommodation be provided for those about to be displaced? I would be very grateful if the Hon. Minister would be kind enough to clear some of these doubts in my mind. Of course it is a very great step and a noble step if it is done according to the principles of the Hon. Minister but one may not be sure that he will always be there and the country may not always be inspired by the same level of education, culture and truth. If the Hon. Minister could deal with some of these points and give an assurance that what is taken will be returned intact without having suffered in any way but on the other hand be bettered by the Government taking over, I should be satisfied."

* THE HON. SRI K. MADHAVA MENON :—" Mr. Deputy President, Sir, I shall deal with the legal objections and doubts and also the point raised by Mr. Suryanarayana Rao and other hon. Members suggesting that there was no necessity for the Bill. They observed that if managements were recalcitrant, or doing wrong things or defying the authorities, the M.E.R. have made ample provision for all those things. Apart from the defiance on the part of private managements of orders of the education authorities, there have been several cases where managements actually closed down the institution in the middle of the year. Two such cases have come to my knowledge. For some time past the number of schools has been going on increasing and speculators seem to be taking to school-running as a sort of business to make a sort of profit. There was one such instance in my district; a school with 700 students on the rolls suddenly closed in the month of August or September without paying any of the teachers and the nearest High School was some 10 or 12 miles away and even if it was near, how to make provision for such a large number of students there in the middle of the year? In that case, because it was in my district, temporary sheds were put up and the teachers, such of them as had not been absorbed elsewhere were taken up and the Director was instructed to continue the institution and finish the course. I wish to ask hon. Members what could be done in such

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cases? The manager had been given the building grants and the grant for furniture and under the M.E.R. we have a charge on the properties and we can see to it that it is not alienated but we have no power to use the buildings and furniture or the apparatus. Mr. Suryanarayana Rao said that the M.E.R. have been in existence so long but I do not think there would have been more than 300 institutions in the past whereas the number has gone up to more than a thousand and it is increasing every day. So for a temporary period, we should have power to see that a school is not abruptly closed in the middle of a year and that we continue it for the benefit of the students. After the Select Committee, I asked the Director of Public Instruction whether he feels the necessity for the Bill. He feels that there is need. Defiance of rules and orders is becoming more common now and what is the remedy? The remedy is to cancel recognition; but is it not better that there should be a provision for running the school for a year rather than go without any school? The Government might conduct it themselves or if some other management is willing to take it and if there is no objection, what is there if we entrust it to that management until the local body or the local representatives start another school. The existing power is to destroy schools by the withdrawal of recognition. It is also my answer that the existing rules do not cover a contingency which is envisaged in this Bill.

“ Let me assure you, Sir, there is difference between sub-clauses (2) and (3) of clause 3. I may have a school running in Malabar. If it is closed and action is to be taken according to the provisions of this measure, notice has to be given to the person in possession and he may not be the person who is the owner and that is why in the matter of taking over an order in writing is addressed to the person in possession according to sub-clause (2) and according to sub-clause (3) a copy of such order is served on the owner of the property, because the owner must know that such action has been taken. So, Sir, both the sections are necessary. The property has to be taken possession of immediately and that is secured according to sub-clause (2) and the owner is also apprised of it under sub-clause (3). Reference has also been made to sub-clauses (3) and (4) of clause 8 and hon. Members wanted to know the difference between them. Both these sub-clauses are necessary. If a property is to be handed over to a particular person and he cannot be found a notification is published stating the Government had relinquished control of the property and according to sub-clause (4) it is to be deemed to have been delivered to him and the Government shall not have the liability to pay rent or compensation for any period after that. Sub-clause (3) is intended for the person to whom it should be handed over and sub-clause (4) protects the Government from liability to pay rent or compensation from the date of the publication. I am unable to understand Mr. Suryanarayana Rao's objection to sub-clause (d) of clause 13. Whatever is the decree of the Court, that has to be met and the Government cannot make an order as to costs in respect of matters pending in Courts.

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" So much regarding legal objections and now I wish to say a few words regarding general objections. It has been said that it may prejudicially affect private enterprise. I entirely agree with Dr. Lakshmanaswami Mudaliyar in expressing our thanks to the Christian Missionaries, particularly Catholic institutions for the impetus and help they have rendered for the cause of education in this country. I also know as I said in the other House, that except a few model schools and separate schools, like the Muslim Schools in certain places, the entire elementary education and secondary education are in the hands of either local bodies or private agencies. We have only a few institutions such as middle schools attached to training schools and a few Muslim Schools. It is not as if I am doing things prejudicial to private institutions, discouraging them and by that am presiding over the liquidation of education in the State. I am completely conscious of my responsibility and if I do anything to discourage private agencies, then practically there will be nothing for an Education Minister to do here.

" But I do not envisage such a position. Nothing that has been mentioned in this Bill would have such an effect. Dr. Lakshmanaswami Mudaliyar asked, when Government closed down institutions, did they provide for the teachers elsewhere? Sir, I do not remember any case of having closed down any institution in the last one year. Orders were passed, if at all any were passed, only against aided institutions. And even there, I am not aware of any institutions being closed in the middle of the year or in the course of an academic year."

DR. A. LAKSHMANASWAMI MUDALIYAR :—" Sir, I was referring to the closing down of uneconomic schools, and I asked whether the children have been provided elsewhere."

THE HON. SRI K. MADHAVA MENON :—" Sir, such schools were rare. Orders were passed only in the case of uneconomic schools. In some cases, in an identical place, two schools would be found running and they would be serving the same area; and there may not be sufficient strength for the two schools. So instead of having both the schools the Director would close down one school and give the grant that was given to the closed school to some other deserving school. I do not think there was any case where an economic school was closed down. If that had been done, I submit, it would be wrong. Suppose there is a school in a place with not sufficient strength, and there is no other school within an area of five miles round it; then it would be wrong to close down that school, even though it may not be an economic school. Then, Sir, if any one were to go round Malabar, he will find in an identical place a Board Moplah School and beside it a Board Hindu School. Practically there would be very few Moplah pupils in the Moplah School. I say, ' Why not close the Hindu School and amalgamate the two and call it Moplah School and run

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it'. In such a case it would be economical to close down one school. I may say, Sir, I am not aware of any economic schools being closed."

At this stage the Council adjourned for lunch.

(After lunch—2-30 p.m.)

THE HON. SRI K. MADHAVA MENON :—" Sir, I have replied to the criticism against the wording of the Bill generally. It remains for me now to answer some of the general points raised by Dr. Lakshmanaswami Mudaliyar. Mr. Ibrahim said that I have not made out a good case for the Bill and that Government are suspicious of private institutions and aided institutions. I submit that it is only institutions which are not doing things properly that have any reason to be afraid of this Bill. If there are any suspicions it is due to the sense of guilt on the part of institutions rather than on Government. If it is the idea of Government that they want to take action against any particular set of institutions or institutions run by a particular community, even without this Bill, it can be done. Government could ask the Director of Public Instruction to cancel recognition and then take possession of the school; and there is nothing more to be done. So it is wrong to suggest that this Bill is intended as a discriminatory legislation, as the Archbishop of Madras has been saying all through, whenever he gets an opportunity to speak. As I said before, the reason for this Bill is that the number of schools is increasing enormously and the number of pupils therein are also increasing enormously. There are cases of management running institutions with a speculative motive. Though there have been instances of even mismanagement or wrong doings in the case of even good Catholic management, as a rule, recent speculative managements have been doing more bad things than the old established institutions, and so we have to guard ourselves against that and we want to have power of control over them. It is for this, this Bill has been brought forward.

" Then, Sir, Dr. Lakshmanaswami Mudaliyar said that this Bill is a reflection on private institutions. Sir, I have already said that it is not a reflection on private institutions. On the other hand it will be a compliment to them, as we will have no occasion to use this Bill against them. The hon. Member referred to the English Education Act of 1944. I had occasion to go through it a few months back. Certainly it will be the proudest day for us if we are to have a Bill like that because that puts the responsibility of entire education, primary and secondary, on Government. I am sure if such a legislation is to be brought in this House there will be a hue and cry of expropriation because that Act empowers Government to take charge of even aided institutions, for whatever purpose they may be run. Even the appointment of teachers and their dismissal in the controlled institutions are vested in the

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Minister. I entirely agree if this Bill can undertake all the responsibility contained in the English Education Act—if financial implications allow it—then that will be a consummation most devoutly to be wished for.

“ Then, Sir, I agree with Dr. Lakshmanaswami Mudaliyar that the progress of education in this country has not been as it ought to be. Sir, that is not due to the lack of interest in education of this Government. This Government has been in office only for the last couple of years.”

DR. A. LAKSHMANASWAMI MUDALIYAR :—“ You have been in office for the last four years.”

THE HON. SRI K. MADHAVA MENON :—“ It is three and odd years. In three and odd years it is impossible even with the rich legacy we got from the previous Government to make a mountain move. The responsibility for the present condition of education in our province lies with those who have been responsible for the Government of this country for the last couple of centuries. Sir, the English Education Act envisages no fees in secondary or elementary schools. It says it is the duty of every parent to send his child to the school; it says it is the duty of Government to give midday meal for all the children; and not only that; if they have no houses to live, they should be provided with houses so that they may lead a decent life. I certainly wish the authors of this Act, who were in charge of our affairs during the last two hundred years, had in their mind the advancement of education in this country when they were here. So, Sir, the charge of neglect of education in this Province cannot be laid at our doors. I shall certainly try to take a lesson from the past history and try how best to improve it. Sir, Sections 22, 36 and 49 of the English Education Act give great powers to Government. They give them power to take possession of any voluntary school for any good educational purpose. It is a bigger power than we have asked. Mr. Suryanarayana Rao asked ‘ why should we take power to run the institution for two years? ’ Sir, I have asked only to run it for one year. The members of the Select Committee suggested to continue it for one more year, if there is any necessity. We have also provided, Sir, that in case there is no suitable body found to take charge of and run the institution then Government should immediately surrender it to the person from whom it was taken. So, Sir, there is no idea of expropriation. Sir, I have seen films of English institutions that are conducted in pursuance of this English Education Act. We hope we would have sufficient opportunities and the good fortune to have at least portions of that Act worked here. Under that Act the Government have to provide school children even with milk and meals.

“ There is provision for delegation of certain powers of the Minister in the English Act. In this Bill also, there is provision for delegation of powers though it may not be to the same extent as in the English Act.

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“ It has been deliberately said that the regulations framed under the English Act may be placed before Parliament. So much of power is given to the Minister that the Parliament said that the regulations should be placed before it. I have no objection for placing the regulations or rules before the House because we are not going to frame rules which we are afraid to place before the House.

“ Dr. A. Lakshmanaswami Mudaliyar said that in England the property of the Universities was exempt from taxation and added that the property of the Madras University was subject to taxation by the City Corporation. I had no occasion to study the City Municipal Act minutely. But under the Madras Local Boards Act and the District Municipalities Act, all educational institutions are exempt from taxation. Even a private building rented for an educational purpose is free from taxation.”

DR. P. S. SRINIVASAN :—“ Such buildings are subject to taxation.”

* THE HON. SRI K. MADHAVA MENON :—“ I was also the Chairman of a Municipal Council for six years. But my knowledge is more than twelve years old.

“ I did not really follow Mrs. Hensman's contention. She asked what would become of the endowments. The Government will not take charge of endowments. They will continue to be in charge of the same persons who were managing them before. We will be taking over only the building and apparatus, maps, furniture, etc. She also referred to the question of purchase. There is no question of purchase at all. The Government do not propose to buy anything from anybody.”

MRS. MONA HENSMAN :—“ Under clause 3 (5) (ii) the Government can transfer the management. It is a purchase and then passing it on.”

* THE HON. SRI K. MADHAVA MENON :—“ It is not so.

“ The Government may permit any other person or body including a local authority to use or deal with such property for any such purpose, subject to the payment of such rent and other sums to the Government as may be specified. When the Government take over a building, they are liable to pay rent. When they entrust it to a local body, that local body also must pay the rent. That is all the provision that has been made.

“ About men embracing woman and all that, clause 7 has no relation to what Mrs. Hensman had in her mind. If an officer wants to enter a building wherein there are women not appearing in public according to the customs of the country, he is not allowed to enter the building straightway. He must give reasonable warning and facility for such women to withdraw. That is all the provision.

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“ Mr. Ahmed Ibrahim said that he could not understand the imperative necessity for this Bill. I think I may not be able to satisfy him. All I can say is that the Government intend to take over control of an educational institution only when it becomes imperative and only when they think that they cannot otherwise provide for the education of the students in that institution.

“ Messrs. Bhima Rao and Narayana Menon objected to the proviso to clause 3 (5) (ii) which says that the person or body to whom a property is entrusted shall be of the same religious denomination as that of the person or body from whom that property was taken over. Christian institutions, particularly Catholic institutions, have got a chapel attached to almost every one of their institutions. They resent and perhaps rightly and consider it a sacrilege to hand over the institution to any religious denomination other than their own. The provision has been made deliberately to respect the sentiments of certain people who would otherwise feel wounded.”

THE DEPUTY PRESIDENT :—“ The question is—

‘ that the Madras Educational Institutions (Requisition of Property) Bill, 1948 (L.A. Bill No. 25 of 1948), as passed by the Legislative Assembly, be taken into consideration at once ’.”

The motion was carried.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 1 and the Preamble were put and carried.

* THE HON. SRI K. MADHAVA MENON :—“ Sir, I move —
‘ that the Bill be passed into law ’.

“ I forgot to mention one thing in my reply. It is true that the definition of the term ‘ educational institution ’ includes college. But I may assure the House that this Bill is not intended for colleges. Our major difficulty is with secondary schools and this Bill is primarily intended to deal with them. The Government contribute much to these schools by way of grants for building, equipment, etc. We are not likely to have any difficulty from colleges, because the number of students in them will be much less than those in high schools. Though the definition includes colleges, I hope that there will be no occasion for taking action against colleges under this Bill.”

THE DEPUTY PRESIDENT :—“ The question is—

‘ that the Madras Educational Institutions (Requisition of Property) Bill, 1948 (L.A. Bill No. 25 of 1948), be passed into law. ’ ”

The motion was carried and the Bill was passed into law.